

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GARY F. LALONDE,

Plaintiff-Appellant,

v

JP MORGAN CHASE BANK NA, BRANDT,  
FISHER, ALWARD & ROY, P.C., DONALD A.  
BANDT, JOSEPH C. FISHER, THOMAS R.  
ALWARD, EDGAR ROY, III, GARY D.  
POPOVITS, BUTLER, BUTLER & ROWSE-  
OBERLE, PLLC, KENNETH C. BUTLER, II and  
JOHN W. BUTLER,

Defendants-Appellees.

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UNPUBLISHED

July 14, 2011

No. 295238

St. Clair Circuit Court

LC No. 09-002373

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

PER CURIAM.

This case involves plaintiff's claims of abuse of process and fraud. These claims stem from a previous case in 2008 in which defendant JPMorgan Chase Bank (the bank) secured a judgment against plaintiff on a personal guarantee he gave in connection with a business loan. The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), and imposed sanctions against plaintiff pursuant to MCR 2.114. Plaintiff argues that the trial court erred by granting summary disposition in favor of defendants because he provided evidence that defendants used the United States Postal Service (USPS) to commit fraud against him. We affirm that part of the order granting summary disposition in favor of defendants, but reverse that part of the order imposing sanctions against plaintiff.

In the previous case, the bank sued plaintiff and Premiere Performance, Inc., of which plaintiff was the sole shareholder, after Premiere Performance defaulted on a business line of credit. The Bank maintained that plaintiff personally guaranteed the loan to Premiere Performance. Several documents in the case that were mailed to plaintiff by the bank's attorneys (defendants Brandt, Fisher, Alward and Roy) were routed through New York. The USPS informed plaintiff that the wrong barcode had been placed on the envelopes, causing them to be sent first to New York. The USPS did not give any indication that defendants deliberately used the wrong barcode. The trial court granted the bank's motion for summary disposition against plaintiff. Plaintiff did not appeal the trial court's decision in the previous case.

Plaintiff subsequently brought the present suit alleging abuse of process and various types of fraud with regard to the documents mailed to plaintiff in the previous case. Defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10). During a hearing on the motion, the trial court opined that the issues in this lawsuit should have been raised as defenses or counter-claims in the previous case. The court granted the motion for summary disposition on the grounds of res judicata, but its order further stated that it was also granting defendants' motion under MCR 2.116(C)(8) and (C)(10). The trial court awarded defendants attorney fees and costs as a sanction under MCR 2.114 on the ground that the present suit was brought for an improper purpose.

## I. SUMMARY DISPOSITION

This Court reviews de novo a trial court's summary disposition ruling. *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280, 287; 731 NW2d 29 (2007). In a motion under MCR 2.116(C)(7), the Court accepts the allegations in the complaint as true unless contradicted by documentation submitted by the moving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). In a motion under MCR 2.116(C)(8), the contents of the complaint are accepted as true and construed in the light most favorable to the nonmovant. *Id.* Summary disposition is appropriate under (C)(8) where no factual development would justify recovery. *Id.* Under MCR 2.116(C)(10), the Court views the evidence in the light most favorable to the non-moving party. *Id.* at 120. If the evidence reveals no genuine issue of material fact, summary disposition is appropriate. *Id.*

Plaintiff first argues that the trial court erred by refusing to allow him to introduce evidence that defendants mailed important documents to New York instead of directly to him, thereby depriving him of the opportunity to properly respond. However, a review of the record does not reveal that the trial court excluded any evidence proffered by plaintiff. Plaintiff filed two exhibits with his response to defendants' motion for sanctions, and filed additional exhibits after the court had granted summary disposition. Consequently, the record does not support the factual basis for plaintiff's argument.

Consideration of this evidence, however, still would not have provided factual support for plaintiff's claims. The evidence would at most support a finding that someone in the law firm of Brandt, Fisher, Alward & Roy mislabeled several pieces of mail. An abuse of process claim requires proof of an ulterior purpose. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Similarly, the claims of fraud require proof that defendants acted at least recklessly. *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 253 n 8; 701 NW2d 144 (2005). There is no evidence that the mislabeling of mail in the instant case was more than an innocent mistake, nor is there any evidence that any defendant was aware that the mail was being routed through New York. Contrary to plaintiff's suggestion, the correspondence from USPS does not suggest improper intentions on the part of defendants. A claim of fraud cannot overcome a motion for summary disposition based on the claimant's mere speculation. *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995). Therefore, summary disposition was appropriate under MCR 2.116(C)(10).

Plaintiff also argues that the trial court's decision violates his due process and equal protection rights under the Fifth and Fourteenth Amendments. Plaintiff does not provide any legal support for this argument. Therefore, the argument is abandoned and need not be considered by this Court. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). Plaintiff additionally argues that the trial court's decision was erroneously based on the statute of limitations. This argument is factually incorrect as the trial court did not grant summary disposition on the basis of the statute of limitations.<sup>1</sup>

## II. SANCTIONS

Plaintiff argues that he should not be sanctioned simply because he, as a pro se litigant, was unaware of certain legal rules or procedures. This Court reviews for clear error a trial court's finding that an action was brought for an improper purpose. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). The finding is clearly erroneous if this Court is left "with a definite and firm conviction that a mistake has been made." *Id.*

The trial court granted sanctions under MCR 2.114. Under MCR 2.114(D)(3), the signature of a pleading by even an unrepresented party certifies that the document is not being presented for any improper purpose, such as harassment or delay. The trial court in the present case based its award of sanctions on a finding that plaintiff brought this suit for an improper purpose, not merely because the case lacked legal merit.

It is not at all apparent, however, that plaintiff brought this suit for an improper purpose. It is clear from the record that mail intended for plaintiff was actually delayed, and it is entirely possible that such delays impacted his ability to defend the earlier case. Plaintiff does not have a good understanding of the law or legal procedure,<sup>2</sup> but he appears sincere in his belief that he could find redress through the present case. Plaintiff did not know until shortly before he filed this case that his mail had been mislabeled. Given that this Court has held that pro se litigants are generally held to a less stringent standard when determining if sanctions are warranted, see *People v Herrera*, 204 Mich App 333, 339; 514 NW2d 543 (1994), we conclude that the trial court clearly erred in finding that plaintiff brought this suit for an improper purpose and, therefore, reverse the imposition of sanctions against plaintiff.

Plaintiff also argues that the trial court violated his rights by refusing to address his motion for stay until he paid the sanctions. This argument was supported only by a citation to a habeas corpus case from the federal court for the Eastern District of Michigan, which is entirely

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<sup>1</sup> Because we conclude that the trial court properly granted summary disposition under MCR 2.116(C)(10), we need not address whether summary disposition was also proper under MCR 2.116(C)(7) and (8).

<sup>2</sup> For example, plaintiff's brief on appeal contains several cites to criminal and evidentiary case law that is completely inapposite to the issues at hand.

irrelevant to the present case. This argument is not sufficiently briefed and is therefore considered abandoned on appeal. *Etefia*, 245 Mich App at 471.

The grant of summary disposition is affirmed, but the imposition of sanctions is reversed. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ E. Thomas Fitzgerald  
/s/ Douglas B. Shapiro